

## MOSES LAKE TOTAL MAXIMUM DAILY LOAD ADVISORY GROUP

### Minutes

### Open Public Meeting

July 23, 2003

An open public meeting of the Moses Lake Total Maximum Daily Load (TMDL) Advisory Group was called to order at the Moses Lake Fire Station #1 at 7:00 PM. The meeting was pursuant to the action taken from the May 28<sup>th</sup> meeting where it was decided to await responses from the Department of Ecology (DOE) and the Environmental Protection Agency (EPA) to questions posed by members of the committee.

A supermajority of members was present, along with interested members of the community, local media representatives, representatives from the EPA, representatives from the DOE, legislators, and other elected officials from the community.

Also present by invitation was Senator Joyce Mulliken and William Riley of the Big Bend Economic Development Council.

Tom Dent, Chairman, presided.

Without objections, it was decided to accept the notes distributed by Representative Janéa Holmquist as minutes for the previous meeting and to approve them. The Department of Ecology was not able to provide a secretary to take the minutes of this meeting so the Chair requested the staff of Senator Joyce Mulliken to record the proceedings of the meeting. This was approved without objections.

Senator Joyce Mulliken provided an update on a legislative meeting held in Olympia on June 5<sup>th</sup> with legislators and the DOE and EPA to determine the roll EPA has in requiring TMDL studies across the State. Those in attendance were; Senator Joyce Mulliken, Senator Bob Morton, Representative Janéa Holmquist, Representative Bill Hinkle, Randy Smith (EPA), Ted Sturdevant (DOE), Meagan White (DOE), John Stuhlmiller (Senate Staff), Jim Zimmerman (Trout lodge), Jim Parsons (Vice-Chair Moses Lake TMDL and Trout lodge), Summer Friend (LA to Rep. Holmquist), and Kyle Lynch (LA to Senator Mulliken). She explained the meeting was a round table discussion without an agenda. Several issues related to the Moses Lake TMDL came out during this meeting. One item was a concern that the citizens of Moses Lake were being misled by letting the Advisory Group believe Moses Lake was still on the 303d list of impaired water bodies. The DOE responded by saying, while not on the current list, Moses Lake will be on the draft 303d list which is still pending. They also agreed the lake has been improving. An example was given of another TMDL where the issue was temperature and not phosphorus. In this case, it wound up being cheaper and less time consuming for the community to plant shade trees than to pursue common sense in the TMDL process.

The EPA spoke to the legislators about its part of the process. It was pointed out that currently they are waiting for the DOE to finish its work. The DOE prepares the 303d list, then the EPA is required to review and approve it. It was pointed out that the EPA does have some time to meet a court mandated deadline of 15 years – a luxury most of the country does not enjoy. They acknowledged that the 1998 303d list is the most current and explained the EPA suspended 303d lists in 2000, but is again moving forward with them. Currently the EPA is only at the TMDL as an observer and will not take an active role until the DOE submits their report to them. The legislators asked if that is true, then why does the EPA have a

voting member sitting on the Moses Lake TMDL Group? The EPA responded by saying their observer should not be a voting member and he would take care of it.

Senator Mulliken reported on a proposal offered to the legislators by the Department of Ecology where the DOE would pause the Moses Lake TMDL if the legislators would take on the issue themselves instead of the Moses Lake Advisory Group. All legislators refused, pointing out this would be going behind the backs of the established citizens group in Moses Lake.

In addition to answering the questions posed in letters sent by the legislators, the DOE agreed to provide answers to several questions. The history of the Moses Lake TMDL – How did the decision to single out Moses Lake get made? Who is making this decision? How can the figures be looked at openly? When did the Moses Lake TMDL start? How does a body of water get removed from the TMDL list? What authority are they operating under? Where do they get their funding? In addition to agreeing to answer these questions, they also agreed to provide a list of where all the TMDL's in the State are taking place. Senator Mulliken reported as of this time, the Department of Ecology had not responded to these questions. This concluded Senator Mulliken's report, there were no questions.

The next presentation was given by James Bellatty, Section Manager for the Water Quality Program in the Eastern Regional Office of the Department of Ecology. He reviewed the letter sent on July 10, 2003 in response to questions brought up during the May 28<sup>th</sup> meeting. He reported there had been some staff changes in his office and apologized for not providing a secretary as they had agreed to in the previous meeting. A new person is assigned to the Moses Lake TMDL Advisory Group. His name is David Knight, who is returning from a military leave of absence after serving in Afghanistan. Following this announcement, he opened up the floor for questions.

- Senator Mulliken asked if a description of how the TMDL process takes place could be given to the group? The DOE representative replied with the following 5 step process:
  1. A technical evaluation takes place
  2. A report is put together discussing potential problems
  3. The technical evaluation is combined with a summary implementation strategy (SIS) and is submitted to EPA following input from the local level.
  4. EPA reviews the submitted plan and either disapproves or approves it
  5. If the submittal report is approved, the plan returns to the State for action which includes the development of a detailed implementation plan. This process traditionally takes a year to complete.
- Senator Morton inquired about the authority of the DOE to be involved with this Moses Lake TMDL process? The DOE representative responded the directive comes directly from the Federal Clean Water Act (section 303(d)) and the State of Washington Water Quality Standards. The DOE representative also followed by saying it was up to individual States to determine their own program in regards to meeting their specific clean water needs.
- Senator Morton asked if Moses Lake was currently on the 303(d) list at this present time? The DOE representative responded that the Senator was correct; Moses Lake was not on the current list. There are four basic criteria must be met to de-list a water body from the 303d list. In 1996 Moses Lake only fulfilled 3 of the 4 criteria in 1996 and thus was on that list. Effectiveness Monitoring at that time was the unfulfilled criteria, but it has since been done. Thus Moses Lake was removed from the 1998 303(d) listing.
- Senator Morton reiterated his original question and asked if Moses Lake was not on the 303(d) listing, then under what authority was a TMDL taking place in Moses Lake? The DOE representative responded that he could understand why it might appear that a Moses Lake TMDL was not a priority (with a de-listing), but said he couldn't speak for the history of DOE before his employment. He did assume that perhaps because process had already been started Moses Lake, due to their 1996 listing, more than likely they just continued with the TMDL.

- Senator Morton stated that by authority of the Legislature salmonid waters were to take a priority within the TMDL process and there were still a great deal of those water bodies that have not undergone TMDL assessment. The DOE representative was unable to comment on this.
- Senator Mulliken asked if the EPA had authority to direct DOE to undertake this process? The DOE representative said any given state could pose a plan to the Federal Government as to their individual desired involvements in the Clean Water Act regulations. Our state accepted total responsibility to establish water programs and establish water quality standards.
- Senator Mulliken also asked about the DOE's involvement with the local level before entering into the planning stages. She inquired if they ask about problem areas and if assistance is even desired? The DOE representative stated the department does make an effort to reach out. He also stated they do not reach out as far as they should and perhaps more of a public process was needed.
- Richard Teals, Central Basin Audubon Society, commented he felt the TMDL was positive and bringing about needed improvements to the area. Senator Morton replied a TMDL was not essential for improving the quality of the lake and to see improvements take place if found necessary.
- Jim Parsons, Vice-Chair, inquired if there was going to be another draft for public comment of the technical study, which the DOE originally produced in November 2002? The group had been told a technical study would be updated and distributed in February 2003, and that study has not been brought before the group. The DOE representative said he was willing to bring individuals involved with that study to a future meeting in order to gain feedback and work towards finalizing the document.
- Senator Mulliken inquired as to whose monitoring in regards to the technical study would be accepted. Would it be possible to utilize local research by the local Bureau of Reclamation, which has been doing monitoring on the Lake since the mid seventies? Terry Nichols stated that she had read through the Bureau's information and it was very extensive and informative.
- One committee member also inquired as to who would be validating the conclusions brought about by the technical study? He inquired if there had been peer review to validate the findings were based upon good science. The DOE representative replied much of the research had been by WSU professor Dr. Welch.
- Ed McLeary, Rocky Ford Creek Landowner, stated the lake had already improved significantly since the 1960's, and improvements could be made to the Lake with much less effort. Ed also expressed concern on the elimination of local control once the SIS had been sent to the DOE. The DOE representative stated he would not submit a SIS the local group had not approved.
- Representative Holmquist inquired if any bodies of water had ever been removed from the 303(d)? The DOE representative stated there were some. Holmquist then asked if we could be removed from the process and stated there should be a quality assurance for listing.
- Senator Mulliken inquired if the next technical study comes out and the peer reviewed science does not support the need for a TMDL study, would the DOE "go away?" She stated standards of science should not be a revolving door and either the science supports the action or it does not. The DOE representative stated they would keep working at it to make sure the information was correct. Senator Mulliken again stated the process should not be moving target.

- Representative Holmquist inquired as to the level of phosphorous in the lake that would determine it indeed had a significant concentration?. The DOE representative stated the amount he found appropriate was 50 ug/L and he would be willing to live with that as the number of validation.

William Riley, Executive Director for the Big Bend Economic Development Council, gave a presentation regarding some possible reasons for naturally having a higher phosphorus level in Moses Lake. He stated tests for water quality must be site specific and the study also included more than just Moses Lake.

The study also did not consider the influence waterfowl have on the lake. He made several observations. The Lake has several large populations of geese, ducks, cormorants, and seagulls. He stated they are a likely source, but not previously factored component. One possibility for this is, due to urbanization of the birds, they are no longer migrating and are staying year round. He observed this is causing problems and maintaining their population should be considered. One large fowl can produce 1 pound of feces per day. Before moving forward, data on wildfowl and their contribution to the problem should be collected. The floor was then opened for comments.

- Richard Teals from the Central Basin Audubon Society stated the best available science should consider the birds' involvement, but also a consideration on cattle's contribution to the water bodies could also be discussed.
- Jim Parsons, Committee Vice-Chair, felt it was unfortunate that waterfowl were indeed left out of the rough draft technical study. The reason given for not including the feces was due to the notion it was a transitory deposition and it would likely be flushed away.
- Jim Parsons, Committee Vice-Chair, presented to the group a preliminary assessment of Moses Lake waterfowl and phosphorus production, which had been done by J.E. Jack Rensel, PhD. He stated it should be taken into consideration for 4,500 pounds of phosphorus was contributed from October through January due to the waterfowl.

Chairmen Dent then asked for comments and thoughts on future meetings. One suggestion was to look into the impact of running irrigation water through the lake and how volume and timing affected the phosphorus levels. Terry Nichols said she felt it would be worthwhile for someone from the Bureau of Reclamation to give a summary of their research in order to discover what they have done and what could still be done in the way of study on the Lake. James Bellatty from the DOE said there would be some one at the next meeting who would be able to take notes and this was not an unreasonable request as it what they would provide for any of their other meetings.

Chairman Dent inquired about the best time for the next meeting. It was approved by unanimous voice vote that the Chairman should be responsible for calling the next meeting when schedules permitted.

There being no further business before the meeting, it was on motion duly made and seconded, adjourned at 8:50 p.m.

Respectfully Submitted by  
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 Senator Joyce Mulliken

With the assistance of  
 Summer Friend  
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